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WASHINGTON, DC 20001-5303

In re Application of :
Fogh, et al. : DECISION ON PETITION
U.S. Application No. 10/588,082 : UNDER 37 CFR 1.78(a)(6)
PCT No.: PCT/DK05/00068 :
Int. Filing Date: 30 January 2005 :
Priority Date: 30 January 2004 :
Attorney Docket No. FOGH 5A :
For: PRODUCTION AND PURIFICATION OF :
RECOMBINANT ARYSULFATASE A :

This decision is in response to "Petition under 37 CFR 1.78(a)(6) to Accept Unintentionally Delayed Claim under 35 U.S.C. 119(e)" filed March 20, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed application data sheet.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed provisional application is submitted

after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(6).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed provisional application has been included in an application data sheet, as provided by 37 CFR 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 119(e) to the above-noted, prior-filed provisional application satisfies the conditions of 37 CFR 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

Any questions concerning this matter may be directed to Anthony Smith at (571) 272-3298.

This application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision, including awaiting applicant's response to the Notification Of Missing Requirements mailed April 20, 2007 and for updating USPTO records to include the benefit claim to the prior-filed provisional application referred to in the present petition.



Boris Milef
Legal Examiner
Office of Petitions and PCT Legal Administration